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REPT. 99-709
Part 1

PROVIDING FOR SKI AREAS ON NATIONAL FOREST LANDS, AND FOR OTHER PURPOSES

JULY 23, 1986.—Ordered to be printed

Mr. UDALL, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany H.R. 4489]

(Including the cost estimate of the Congressional Budget Office)

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 4489) to provide for ski areas on national forest lands, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Page 1, line 3, strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Forest Ski Area Permit Act of 1986".

SEC. 2. PURPOSES.

The purposes of this Act are to—

(a) provide for ski area permits which more closely reflect the acreage and other physical requirements of modern ski area development; and

(c) provide a permit system which will be more commensurate with the long-term construction, financing, and operation needs of ski areas on national forest lands.

SEC. 3. SKI AREA PERMITS.

(a) LAW APPLICABLE TO PERMITS.—The provisions of the Act of March 4, 1915 (16 U.S.C. 497) notwithstanding, the term and acreage of permits for the operation of nordic and alpine ski areas and facilities on National Forest System lands shall henceforth be governed by this act and other applicable law.

(b) AUTHORITY.—The Secretary of Agriculture (hereinafter referred to as "the Secretary"), subject to such reasonable terms, conditions, and permit fees as he deems appropriate, is hereby authorized to issue permits (hereinafter referred to as "ski area permits") for the use and occupancy of suitable lands within the National Forest System for nordic and alpine skiing operations and purposes. A ski area permit—

(1) may be issued for a term not to exceed 40 years;

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(2) shall ordinarily be issued for a term of 40 years (unless the Secretary determines that the facilities or operations are of a scale or nature as are not likely to require long-term financing or operation, or that there are public policy reasons specific to a particular permit for a shorter term;

(3) shall encompass such acreage as the Secretary determines sufficient and appropriate to accommodate the permittee's needs for ski operations and appropriate ancillary facilities;

(4) may be renewed at the discretion of the Secretary;

(5) may be cancelled by the Secretary in whole or in part for any violation of the permit terms or conditions, for nonpayment of permit fees, or upon the determination by the Secretary in his planning for the uses of the national forests that the permitted area is needed for higher public purposes.

(6) May be modified from time to time by the Secretary to accommodate changes in plans or operations in accordance with the provisions of applicable law.

(c) RULES AND REGULATIONS.—Within one year after the date of enactment of this act, the Secretary shall promulgate rules and regulations to implement the provisions of this Act, and shall, to the extent practicable and with the consent of existing permit holders, convert all existing ski area permits or leases on National Forest System lands into ski area permits which conform to the provisions of this Act within 3 years of the date of enactment of this Act.

(d) Nothing in this Act shall be deemed to amend, modify or otherwise affect the Secretary's duties under the National Environmental Policy Act, or the Forest and Rangelands renewable Resources Planning Act as amended by the National Forest Management Act, including his duties to involve the public in his decisionmaking and planning for the national forests.

BACKGROUND AND NEED

Approximately 170 alpine and nordic ski areas operate on national forest lands under permits issued by the U.S. Forest Service. Over the past two decades there has been an explosive growth in snow skiing in the United States, making skiing one of the fastest-growing and most popular recreational uses of the national forests.

Ski areas on the national forests are particularly notable in that, while they occupy a total of less than 100,000 acres (less than a twentieth of one percent of the national forests) they account for more than 6% of the recreational visitor-use on the forests.

Ski areas in the forests currently operate under two separate permits. This dual permit system is a result of the provisions of the Act of March 4, 1915 (16 U.S.C. 497), which limit long-term permits for use and occupancy of national forest lands to areas no greater than 80 acres and for periods no longer than 30 years.

Modern ski areas are quite different from most of the other operations (such as marinas, summer resorts, etc.) which are currently permitted under the 1915 Act. Modern ski areas may involve thousands of acres on which construction, operation and maintenance may take place. Ski areas—particularly alpine ski resorts—also involve major investments in capital-intensive facilities such as ski lifts and snow-making equipment, and extensive and expensive construction of trails, access roads, and buildings.

In the past, the Forest Service has been able to accommodate ski development under the 1915 Act by issuing a long-term permit under that Act for 80 acres containing the most capital-intensive facilities (ski lifts, lodges, and the like), while making available the remainder of the area (including trails and slopes which can cover as much as 10,000 acres) under one-year permits issued under the authority of the Organic Administration Act of 1897.

The Forest Service has, as a rule, automatically renewed the annual permits as long as the long-term permit was in effect. But the use of annual permits poses a potential problem for the financing of ski areas and their capital-intensive facilities. Even though automatically renewed, dependency on one-year permits detracts from the value of a ski-development as collateral for bank financing and from its attractiveness as an investment to potential shareholders.

The ski industry is particularly concerned that this problem may grow in importance if pending revisions of the tax laws reduce their ability to finance development by such means and industrial revenue bonds. The industry fears that recent conservative trends in banking practices, the possible elimination of IRBs, and the perception that an annual permit lacks the long-term security needed for collateral for private financing, will lead to increased costs and reduced availability of financing for new ski areas or for major improvements in existing areas. This in turn would mean higher costs to the recreational users.

For similar reasons the ski industry also favored increasing the maximum length of their permits above the present 30 year limit. They believe that permits should be of sufficient length so that the permit would retain its viability as long-term collateral for financing improvements past the 5–10 years which might be required to develop an area to the point where further investment can be justified and supported.

INTENT OF THE COMMITTEE AMENDMENT

H.R. 4489, as amended by the Committee, is intended to replace the dual permitting system now used for ski areas on national forest lands with a system providing a single, long-term permit covering all lands needed for operation of a ski area.

As introduced, H.R. 4489 provided for a 55 year maximum term for ski area permits. The Administration testified in favor of retaining the current 30 year maximum. The Committee amendment provides for a 40 year maximum term.

Section 3(b)(2) of the Committee amendment provides that ski area permits "shall ordinarily be issued for a term of 40 years (unless the Secretary determines that the facilities or operations are of a scale or nature as are not likely to require long-term financing or operation, or that there are public policy reasons specific to a particular permit for a shorter term)."

The intent of this language is to ensure that the Secretary must provide a clear rationale for any decisions to issue a ski area permit for less than 40 years. The Committee amendment provides that the Secretary may issue shorter permits for either of two reasons. The first is that the longer term would not aid the financing of the facilities and operations under permit. The second would be that there is some public policy reason specific to a particular permit area justifying the shorter term. The Committee adopted language requiring "public policy reasons *specific to a particular permit*" (emphasis added) to stress that it did not intend to give the Secretary the discretion to decide, as a general policy, that ski areas should not receive 40 year permits.

While this bill requires the Secretary to justify each instance in which he issues a permit for less than 40 years, the Committee wishes to point out that its language leaves the determination of adequate justification for shorter permits in the hands of the Secretary. By specifying that permits would "ordinarily" be issued for 40 year terms the Committee does not intend to require that every permit, or even that the preponderance of permits, be for the 40 year maximum. Nor does the Committee intend to limit the Secretary's flexibility to meet the needs of specific situations by such means as the issuance of short-term preconstruction permits for new areas.

As reported by the Committee, H.R. 4489 gives the Secretary discretion to determine the appropriate acreage which would be covered by each permit and does not set any upper limit on the size of a permit area. Some concern has been expressed that the bill's authority to grant permits of a size "sufficient and appropriate to accommodate the permittee's needs for ski operations and appropriate ancillary facilities" will somehow lead to a change in Forest Service policy on the construction of housing and other potential "ancillary facilities" on National Forest lands is concerned. The Committee wishes to emphasize that H.R. 4489 is not intended to change the current policy in that regard. Specifically, with respect to the construction of housing and lodging on National Forest lands, the present Forest Service manual authorizes "provision of [public] lodging accommodations on National Forest land only where there is a public need for the facilities and where there is no suitable private land for such facilities within a reasonable distance." The Committee feels the present manual policy is appropriate and should be continued.

The Committee further notes that the phrase "appropriate ancillary facilities" is intended to include only those facilities directly necessary for the operation and support of a winter sports facility. Developments such as golf courses or water slides which are not integrally part of skiing operations should not be issued permits under the authority of this bill, which is intended to apply only to ski areas. Even where appropriate, facilities not directly related to the operation of a ski area should be authorized through a separate permit, under the authority of the 1915 Act.

Section 3(b) of the bill authorizes the Secretary to issue ski permits "subject to such reasonable . . . permit fees as he deems appropriate." It is the understanding of the Committee that the Forest Service currently is directed by the Fees and Charges Act of 1951 (5 U.S.C. 140), the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483(a)), and by OMB Circular A-25, to collect fair market value for ski area permits, and that this direction is incorporated in Forest Service regulations (36 CFR 251.57). The Committee does not intend Section 3(b) in any way to override or interfere with those directives, but only to ensure that the Secretary retains the authority to carry them out.

Section 3(c) of the bill requires the Secretary to convert existing dual-permits for ski areas to the single, long-term permits authorized by this bill, within 3 years. It is the intent of the Committee that, should a permittee wish to retain its existing dual-permit for any reason, that it be allowed to continue under the existing term

permit and renewable annual permits until such time as the existing term permit expires.

In reporting H.R. 4489, the Committee emphasizes that nothing in this bill is intended to change the environmental and other standards that an existing or potential permittee must meet to obtain a ski area permit for a new ski area; to expand a permit area; to construct new facilities (lifts, trails, buildings, etc.) in the permit area; or to build out a master plan, insofar as environmental protection and mitigation requirements are concerned.

Specifically, nothing in this bill is intended to modify or bypass in any way the requirements of the National Environmental Policy Act, the Forest and Rangeland Renewable Resources Planning Act (as amended), the Endangered Species Act or other applicable law with respect to planning for and development of ski areas, the preparation of necessary environmental impact statements or analyses, and requirements for public involvement in planning and decisionmaking and consultation and coordination with state and local government agencies and officials (including state game and fish authorities). And, of course, the issuance of permits for alpine and nordic ski areas, and the operation of such areas, shall continue to be done in accordance with principles of multiple use and with the planning and other requirements of the Multiple Use Sustained Yield Act of 1960, the Forest and Rangeland Renewable Resources Planning Act of 1974 (as amended), and other applicable law.

The Committee believes that careful planning and consideration of environmental impacts is essential for the successful integration of ski development with the other multiple-uses and values of the national forests.

The Committee urges the Forest Service to work to see that the impacts of ski development on the national forests, and related development on adjacent state and private lands, are fully considered and responsibly dealt with, and urges the Forest Service to work closely with local and state authorities, including local planning authorities and State Fish and Game Departments, to see that an integrated approach is taken to minimize impacts on public resources—state and local as well as federal.

SECTION-BY-SECTION ANALYSIS

Section 1—Short Title.

Section 2 provides that the purpose of the bill are to provide a modern permitting process for ski areas in the national forests which reflects the physical requirements of modern ski areas and is more commensurate with the long-term financing and operation of such areas.

Section 3(a) provides that the provisions of this Act shall supercede those of the Act of March 4, 1915.

Section 3(b) provides that: the Secretary may issue permits to ski areas for up to 40 years; 40 year permits will ordinarily be the term of these permits; such permits may encompass whatever acreage the Secretary deems sufficient; the permits shall be renewable; the permits may be cancelled by the Secretary for any violation of their terms or conditions, for nonpayment of fees, or to accommo-

date higher public purposes; and that the Secretary may modify the permits to accommodate changes in conditions.

Section 3(c) requires promulgation of regulations implementing this Act within one year, and conversion of existing ski permits to ones conforming with this Act within 3 years.

Section 3(d) disclaims any effect on the Secretary's duties under other laws affecting the national forests.

COST AND INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of Rule XI of the Rules of the House of Representatives, the Committee finds that enactment of H.R. 4489, as amended, will have no inflationary impact on the national economy. The analysis of the Congressional Budget Office on the costs of this legislation follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 15, 1986.

Hon. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 4489, the National Forest Ski Area Permit Act of 1986, as ordered reported by the House Committee on Interior and Insular Affairs on June 25, 1986.

H.R. 4348 would authorize the Secretary of Agriculture to issue permits for the use and occupancy of lands within the National Forest System for nordic and alpine skiing operations, for a term not to exceed 40 years. The bill directs the Secretary to promulgate rules and regulations to implement the new permitting procedure within one year after the date of enactment. Subject to the consent of existing permit owners, the Secretary would convert existing ski area permits or leases on National Forest lands into ski area permits that conform to the provisions of this bill within three years after the date of enactment. The bill authorizes the Secretary to assess permit fees as he deems appropriate.

Based on information from the Forest Service, CBO estimates that implementation of H.R. 4489 would result in no significant cost to the federal government. Enactment of the bill would enable the Forest Service to cease issuing annual ski area permits, yielding a slight annual savings once permit conversion is completed.

Enactment of H.R. 4489 would not affect the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

RUDOLPH G. PENNER, *Director.*

LEGISLATIVE HISTORY

H.R. 4489 was introducted by representatives Tim Wirth, Michael Strang, and 24 cosponsors on March 21, 1986.

The Subcommittee on Public Lands held a hearing on H.R. 4489 in Washington, D.C. on May 15, 1986.

The Subcommittee on Public Lands adopted an amendment to H.R. 4489 in the nature of a substitute, and reported the bill, as amended, favorably to the Committee on Interior and Insular affairs on June 17, 1986.

COMMITTEE RECOMMENDATION

The Committee on Interior and Insular Affairs approved the bill, as amended, and, by voice vote, ordered it reported favorably to the House on June 25, 1986.

ADMINISTRATION VIEWS

A Report from the Department of Agriculture on H.R. 4489 was received by the Committee. The Report is as follows:

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, DC, May 30, 1986.

Hon. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: As you requested, here is our report on H.R. 4489, a bill "To provide for ski areas on national forest lands and for other purposes."

The Department of Agriculture recommends that H.R. 4489 be enacted only if amended. We support the single permit system proposed by the legislation but oppose the 55-year term for such permits.

H.R. 4489, cited as the "National Forest Ski Area Permit Act of 1986," would establish new authority for issuance of all commercial alpine and nordic skiing area and facility special use permits on National Forest System lands. It would extend our present authority governing the term of a permit from a maximum of 30 years to ordinarily 55 years "unless the Secretary determines that the facilities or operations are of a scale or nature as are not likely to require long-term financing or operations." The proposal would encompass such acreage as the Secretary determines sufficient and appropriate to accommodate the permittee's needs for ski operations and ancillary facilities. Currently, there is an 80-acre maximum acreage for term occupancy permits which authorize major recreation developments such as ski areas on the National Forests.

There are two primary acts which authorize the Secretary of Agriculture to issue permits and regulate occupancy and use for ski areas or operations on National Forest System lands—the Act of June 4, 1897 (30 Stat. 11, as amended), and the Act of March 4, 1915 (38 Stat. 1086, as amended). Under the 1915 Act, occupancy permits can be issued for a maximum of a 30 year term and for a maximum of 80 acres for facilities and structures. In order to accommodate ski area developments, one occupancy permit under the 1915 authority is issued to cover high investment installations such as lodges, lift installations, restaurants, and hotels. These are usually issued with 20-year terms, but some have been issued with 30-

year terms. A second permit, an annual permit, is issued to cover remaining areas of the appurtenant ski area development on National Forest System lands such as for ski slopes and parking lots—areas involving less investment. This second permit is issued under the organic authority provided by the Act of June 4, 1897, to administer the National Forests. Essentially, a permittee has a dual permit to cover the overall skiing operation.

Outdoor recreation is a major activity on National Forest System lands. We cooperate with the private sector to provide needed recreation facilities and services. Since 1935, the Forest Service and private industry have been cooperating to provide opportunities for skiing to recreationists. Currently, there are 170 ski areas on the National Forests. In the Western United States, the majority of ski areas are totally or partially on National Forest System lands. In addition, many of the major areas in the East are also on the National Forests. These areas involve over $1 billion of privately invested capital that annually returns approximately $9 million in fees to the Treasury. Often the image of winter sports developments in this country is one of multimillion dollar destination resorts. However, of our 170 alpine ski resorts, less than one in five have investments exceeding $10 million. Nearly half have investments exceeding $1 million, and there are some with investments lower than $100,000. Many permits for nordic ski activities authorize activities with only minimial investments. There is a wide range of investment in skiing facilities and improvements currently under permit within the National Forests.

We support the provision in H.R. 4489 that provides authority to the Secretary to issue a single permit for ski slopes, parking lots, and other lands and buildings covering an acreage that the Secretary determines sufficient and appropriate to accommodate the permittee's overall ski operation and facilities. This one permit system would be an efficient way of doing business for both the Government and the permittee.

We have concerns with the 55-year term. A viable and actively expanding skiing industry operation on National Forest System lands has developed under the current dual permit system. Within the past year in Colorado, $125 million of private capital was invested at existing ski areas which included 19 new lift installations. We have a continuing and active interest in new areas. We presently have 13 applications for new ski area developments under current permitting procedures and policy. We recognize that the dual-permit system is cumbersome, but we have no evidence that the 30-year tenure has been or can be expected to be a deterrent to ski area development. The longer tenure provided by the bill would hinder the flexibility in management that the agency must retain in order tok accommodate the changing needs and demands of the using public.

Our primary concern is the need to provide discretion to the Secretary to issue permits for the term the Secretary determines is appropriate for each individual situation because of the varying nature of the size and investment of skiing operations of National Forest System lands. We believe that language directing the Secretary to issue a permit "ordinarily" for any specific tenure is not necessary or desirable. We recommend that subsection 3(b)(1) be

changed to authorize the Secretary to issue permits for the term deemed necessary, but not to exceed 30 years.

We also recommend that the Secretary be given the discretion to define the term "ski area" in connection with promulgation of regulations. We believe such discretion is necessary because H.R. 4489 could be interpreted to require that any skiing activity authorized under permit be issued under the new authority. This could include occupancy permits for resorts on National Forest System lands that are primarily for summer activities but incidentally provide some winter skiing activities. We believe that these types of permits should continue to be issued under existing occupancy permit authorities and that to do so, discretionary authority to the Secretary is necessary in H.R. 4489.

We recommend that reference to the Act of June 4, 1987 (30 Stat. 34), in subsection 3(a) be deleted. We believe that the basic authorization of the Act should still apply to all National Forest System lands including ski areas. Deleting the reference in this section will not change accomplishment of the intent of H.R. 4489.

We also recommend that any reference to "commercial" in describing ski areas or activities be deleted because it will cause confusion as to the application of the proposed bill. Some of our ski area permittees are not-for-profit organizations or governmental bodies and do not consider themselves commercial organizations.

Finally, we recommend that the requirement that all permits be converted under this authority within 2 years be changed. Instead, we believe that the magnitude of the job and legal implications require some flexibility. It would be our intent to convert permits to the new system within 3 years if the existing permit is in good standing and if the permittee agrees to the conversion prior to the termination date of the existing permit. There is a potential issue of a taking if the bill is enacted and we are required to convert all existing permits within a specific timeframe. Also, where major changes are planned in the near future at some ski areas, it would make sense to wait to convert the permits under the new authorization until any approved changes could be included. This would eliminate having to reissue the permit twice.

Converting existing permits to new permits under this new authority would be an administrative action on an existing operation in most cases, and we would not anticipate that additional procedural requirements involving economic, social, and environmental assessments would be required. These, of course, would be done if there is a proposed change of facilities or expansion.

Currently, the use of the land as a ski operation is shown in the Forest Plan. The term of the permit would not change how the area is considered in the regular planning cycle except that the commitment of the site and the use would be for a longer period of time.

We have a long and successful working relationship with the skiing industry. Together we have been successful in providing the public with skiing opportunities across the Nation. The success, safety, and response to environmental concerns are due to the cooperation and the close working relationships between the Forest Service and the skiing industry. We acknowledge that the industry may be experiencing financing problems associated with our cum-

bersome dual-permit system and that a change to a single permit is warranted. We can support enactment of H.R. 4489 if amended. Enclosed are recommended changes to H.R. 4489.

We estimate that implementation of this bill, if amended as we suggest, would cost approximately $45,000 over the first 4 years to develop rules and regulations and convert permits. Once conversion was completed, there would be a slight annual savings due to no longer issuing annual permits.

The Office of Management and Budget advises that there is no objection to presentation of this report from the standpoint of the Administration's program.

Sincerely,

DANIEL G. AMSTUTZ, *Acting Secretary.*

Enclosure.

USDA SUPPLEMENTARY STATEMENT: RECOMMENDED AMENDMENTS TO H.R. 4489

(1) On page 2, line 1, delete the word "commercial" and delete it throughout the entire bill.

(2) On page 3, line 10, delete "consolidate existing laws" and substitute "provide additional authority".

(3) On page 3, line 22, change the word "Acts" to "Act" and delete "June 4, 1897 (30 Stat. 34) and".

(4) On page 4, line 2, add the following new sentence at the end after the words "applicable law": "To the extent feasible, and with the consent of the permittee, the Secretary shall, within 3 years of the date of enactment of this Act, convert all existing ski area permits which are in good standing at the time of reissuance into ski area permits which conform to the provisions of this Act."

(5) On page 4, line 10, delete the word "shall".

(6) On page 4, lines 11 through 14, delete the entire subsection and insert the following: "(1) shall be issued for such term as the Secretary deems appropriate, but not to exceed a period of 30 years."

(7) On page 4, line 23, insert a comma after "conditions", delete the word "or", change the period at the end to a comma and add the words "or if the Secretary determines the permitted area is needed for higher public purposes."

(8) On page 5, lines 6 through 9, delete all after the word "shall" and insert the following: "define the term ski area as it is to be applied pursuant to this Act."

OVERSIGHT STATEMENT

The Committee intends to maintain oversight responsibility for this legislation if it becomes law. No recommendations were received pursuant to Rule X, clause 2(b).

O